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# State v. Torrez Respondent's Brief Dckt. 40506

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**COPY**

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

JACOB M. TORREZ,

Defendant-Appellant.

No. 40506

Ada Co. Case No.  
CR-2011-5970

**BRIEF OF RESPONDENT**

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

**HONORABLE RONALD J. WILPER  
District Judge**

**LAWRENCE G. WASDEN  
Attorney General  
State of Idaho**

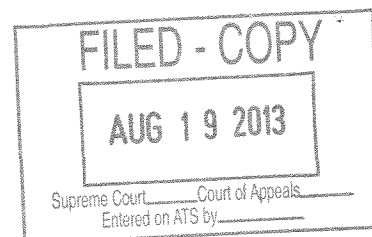
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## STATEMENT OF THE CASE

### Nature Of The Case

Jacob M. Torrez appeals from the district court's restitution order entered following his conviction for aggravated driving under the influence.

### Statement Of The Facts And Course Of The Proceedings

A police officer responded to a report of a disturbance at Kuna State Park. (PSI, p.3.) Witnesses reported that two males were threatening physical violence against people at the park. (Id.) The officer located the men, Jacob Torrez and Andrew Capcha, and observed that both had slurred speech and glassy bloodshot eyes. (Id.) The officer told the men not to drive and advised them he would call a taxi. (Id.)

Shortly thereafter, Torrez drove away with Capcha as his passenger. (PSI, p.3.) Torrez struck a vehicle at a nearby intersection and fled the scene. (Id.) A police chase ensued, during which Torrez traveled at speeds exceeding 100 mph. (Id.) Torrez then lost control of his vehicle, hit a tree, and rolled numerous times. (Id.) Both Torrez and Capcha sustained serious injuries. (Id.)

The state charged Torrez with aggravated DUI, leaving the scene of an accident involving vehicle damage, and driving without privileges (third offense). (R., pp.40-42.) Pursuant to a plea agreement, Torrez pled guilty to aggravated DUI and the state dismissed the remaining charges. (R., pp.95-107.) The district court imposed a unified 10-year sentence with three years fixed. (R., pp.105-108.)

The state requested the court to order Torrez to pay a total of \$82,837.61 in restitution - \$79,518.55 to Ada County Indigent Services for amounts paid on behalf of Capcha, \$56 to Capcha himself, and the remainder to medical and insurance providers. (R., pp.115-116; Tr., p.15, L.23 – p.16, L.3.) Torrez did not challenge the state's calculation of damages, but argued that the court should reduce the restitution amount pursuant to principles of comparative negligence based upon Capcha's voluntary act of riding in a vehicle with a person he knew to be intoxicated. (Tr., p.4, L.14 – p.15, L.14.) Torrez also argued that Ada County Indigent Services was not a "victim" pursuant to I.C. § 19-5304. (Tr., p.10, L.20 – p.12, L.25.)

The district court declined to apply comparative negligence principles and determined that the Ada County Indigent Services was a victim pursuant to I.C. § 19-5304. (Tr., p.20, L.17 – p.26, L.19.) The district court ordered Torrez to pay restitution as requested by the state. (R., pp.115-116.) Torrez timely appealed. (R., pp.117-119.)

## ISSUE

Torrez states the issue on appeal as:

Did the district court abuse its discretion when it awarded \$79,518.55 in restitution to Ada County Indigent Services?

(Appellant's brief, p.6.)

The state rephrases the issue as:

Has Torrez failed to show that the district court abused its discretion in declining to apply comparative negligence principles to Torrez's restitution order?

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## ARGUMENT

### Torrez Has Failed To Show That The District Court Abused Its Discretion In Declining To Apply Comparative Negligence Principles To Torrez's Restitution Order

#### A. Introduction

Torrez contends that the district court abused its discretion when it declined to apply comparative negligence principles to its restitution order entered against Torrez. (Appellant's brief, pp.7-17.) Torrez's contention fails because the language of I.C. § 19-5304 does not require a district court to perform such an analysis.

#### B. Standard Of Review

The interpretation and construction of a statute presents questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

The decision whether to order restitution and in what amount is committed to the trial court's discretion, as guided by the factors set forth in I.C. § 19-5304(7). State v. Higley, 151 Idaho 76, 78, 253 P.3d 750, 752 (Ct. App. 2010); State v. Card, 146 Idaho 111, 114, 190 P.3d 930, 933 (Ct. App. 2008); In Re Doe, 146 Idaho 277, 284, 192 P.3d 1101, 1108 (Ct. App. 2008).



C. Idaho Code § 19-5304 Does Not Require A District Court To Apply Comparative Negligence Principles To Restitution Determinations

Because “the best guide to legislative intent” is the words of the statute, the interpretation of a statute must begin with the literal words of the statute. State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). Where the statutory language is unambiguous, a court does not construe it but simply follows the law as written. McLean v. Maverick County Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006). Thus, if the plain language of a statute is capable of only one reasonable interpretation, it is the court's duty to give the statute that interpretation. Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889, 894-896, 265 P.3d 502, 507-509 (2011) (disavowing cases with language that Court might not give effect to unambiguous language of statute if such was “palpably absurd”).

Idaho Code § 19-5304(2) authorizes a court to “order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim.” Idaho crime victims are constitutionally entitled “[t]o restitution, as provided by law, from the person committing the offense that caused the victim's loss.” Idaho Const. art. I, § 22 (7). Where there is a causal connection between conduct for which a defendant is convicted and the injuries suffered by the victim, a district court is required to order restitution “[u]nless the court determines that an order of restitution would be inappropriate or undesirable.” I.C. § 19-5304(2). In determining whether to order restitution and the amount of such restitution, a district court is required to consider: “the amount

of economic loss sustained by the victim as a result of the offense; the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate.” I.C. § 19-5304(7).

Contrary to Torrez’s contention on appeal, I.C. § 19-5304 does not require a district court to apply principles of comparative negligence and assign blame to a victim for his own economic losses. Torrez contends that such a requirement is implicit in the language of I.C. § 19-5304(1)(a) and (2), which limits restitution to those economic losses “resulting from the criminal conduct.” (Appellant’s brief, pp.11-14.) Torrez contends that any contrary interpretation would render this statutory language superfluous. (Id.) Torrez’s contention fails.

Language from I.C. § 19-5304(1)(a) and (2) restricting restitution to those economic losses resulting from criminal conduct does not require a district court to apply comparative negligence principles to restitution determinations, nor is that language superfluous. Instead, Idaho appellate courts have interpreted this language to require that “in order for restitution to be appropriate, there must be a causal connection between the conduct for which the defendant is convicted and the injuries suffered by the victim.” State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011); State v. Cottrell, 152 Idaho 387, 391-394, 271 P.3d 1243, 1247-1250 (Ct. App. 2012). In Corbus, the Idaho Court of Appeals did not, as Torrez asserts (Appellant’s brief, p.11), implicitly require a district court to apply comparative negligence principles in criminal restitution proceedings, it instead analyzed whether the victim’s losses were actually or proximately caused by Corbus’ criminal conduct, or by an intervening, superseding cause. Corbus, 150

Idaho at 602-606, 249 P.3d at 401-405 (holding that vehicle passenger's act of jumping from vehicle during police chase was actually and proximately caused by driver's criminal conduct for restitution liability purposes).

While I.C. § 19-5304 thus requires a causal connection between criminal conduct and economic loss, it does not require a district court to analyze a crime victim's personal judgment that may have placed him or her in a position of vulnerability, unless that judgment constitutes an intervening actual or proximate *cause* of the economic loss. While Capcha certainly exercised poor judgment in voluntarily entering a vehicle with the intoxicated Torrez, his injuries were caused, for the purposes of restitution liability, by Torrez's criminal conduct. Capcha would not have been injured but for Torrez's criminal conduct. It was also reasonably foreseeable that harm to Torrez's passenger would flow from his criminal conduct of driving under the influence.

This Court should therefore decline Torrez's invitation to look beyond the express language of I.C. § 19-5304 and require, for the first time, district courts to apply contributory negligence principles to restitution determinations. If the legislature wished to so constrain the district court's discretion, it could have done so, either by including a victim's own fault within the I.C. § 19-5304(7) list of factors a district court must consider before ordering restitution, or by including a provision allowing criminal defendants challenging restitution orders to assert any

defenses it could raise in civil actions.<sup>1</sup> Rather than create such provisions, the legislature provided a statutory scheme under which an individual is responsible for the economic damages actually or proximately caused by his crimes.

Additionally, one of the purposes of the Idaho restitution statute is to obviate the need for victims to incur the cost and inconvenience of a separate civil action in order to gain compensation for their losses. State v. Parker, 143 Idaho 165, 167, 139 P.3d 767, 769 (Ct. App. 2006); State v. Waidelich, 140 Idaho 622, 624, 97 P.3d 489, 491 (Ct. App. 2004). This purpose would be compromised if I.C. § 19-5304 were interpreted to require prolonged evidentiary hearings on the respective comparative negligence of criminals and victims. Idaho Code § 19-5304 does not require a district court to replicate a civil action and determine a defendant's restitution liability in accordance with the strict rules of damages and fault attribution applicable to a civil case. See People v. Johnson, 780 P.2d 504 (Colo. 1989) (holding that trial court erred in applying contributory negligence principles and by declining to award restitution to a passenger injured by an intoxicated driver's criminal conduct); see also Doe 146 Idaho at 285, 192 P.3d at 1109 ("it is not the intent of [I.C. § 19-5304] to maintain the strict level of evidentiary requirements in restitution hearings that is required in trials.")

Further, a mandatory comparative analysis of a crime victim's fault would be contrary to the intended benefits of criminal restitution derived by the state, which include the promotion of the "rehabilitative and deterrent purposes of the

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<sup>1</sup>For example, MCA § 46-18-244(2) expressly permits Montana criminal defendants to "assert any defense that the offender could raise in a civil action for the loss for which the victim seeks compensation."

criminal law.” State v. Olpin, 140 Idaho 377, 378, 93 P.3d 708, 709 (Ct. App. 2004); see also State v. Breeden, 129 Idaho 813, 815–816, 932 P.2d 936, 938–939 (Ct. App.1997) (“A restitution requirement facilitates rehabilitation by confronting the defendant with the consequences of his or her criminal conduct and forcing the defendant to accept financial responsibility for the resulting harm.”) As the Wisconsin Court of Appeals reasoned in rejecting an argument similar to that made by Torrez in this case, “[t]o allow a defendant who has already been convicted of a crime to focus on the action of a victim to avoid restitution defeats this purpose [of rehabilitation and deterrence] to evade responsibility for his own actions.” State v. Knoll, 614 N.W.2d 20, 24-25 (Wis. App. 2000).

Finally, even if the district court was required to apply comparative negligence principles in this case, it could only reduce the \$56 amount it ordered Torrez to pay Capcha. As the district court concluded, Ada County Indigent Services, to whom the court ordered Torrez to pay \$79,518.55, was a victim in its own right, and entitled to restitution.<sup>2</sup> (Tr., p.21, L.15 – p.23, L.4.) Torrez has not and cannot show that Ada County Indigent Services was itself somehow comparatively negligent, or that it was required to make its own comparative negligence determination before paying medical bills on behalf of Capcha.

Because Torrez has failed to show that I.C. § 19-5304 requires a district court to consider a victim’s comparative negligence in determining restitution, he

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<sup>2</sup> Torrez has not challenged this determination on appeal.

has failed to establish that the district court abused its discretion in declining to do so in this case.

CONCLUSION

The state respectfully requests this Court to affirm the district court's restitution order.

DATED this 19th day of August, 2013.


  
\_\_\_\_\_  
MARK W. OLSON  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19<sup>th</sup> day of August 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BEN PATRICK McGREEVY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

  
\_\_\_\_\_  
MARK W. OLSON  
Deputy Attorney General

MWO/pm